DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 02-0301
INDIANA INDIVIDUAL INCOME TAX
For the Tax Years 1998, 1999, and 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Taxpayer's Administrative Remedies.

Authority: U.S. Const. amends. V, XIV; IC 6-8.1-5-1; IC 6-8.1-5-1(a); IC 6-8.1-5-1(c); IC 6-8.1-5-1(g); Goldberg v. Kelly, 397 U.S. 254 (1970); Sniadach v. Family Finance Corp., 395 U.S. 337 (1969).

Taxpayer objects to being invited to participate in an administrative hearing and challenges – on due process grounds – the authority of the Department of Revenue to adjudicate his individual income tax liability.

II. Applicability of the State's Individual Income Tax.

Authority: Ind. Const. art. X, § 8; IC 6-2.1-1-16; IC 6-2.1-2-2; IC 6-3-1-3.5 et seq.; IC 6-3-1-9; IC 6-3-1-12; IC 6-3-1-15; 45 IAC 1.1-1-22; 45 IAC 1.1-1-22(b); 45 IAC 1.1-1-22(b)(1); Edwards v. Keith, 231 F. 110 (2nd Cir. 1916); I.R.C. § 61.

Taxpayer argues that he is not subject to the state's individual income tax.

STATEMENT OF FACTS

Taxpayer received notices of proposed assessments for the 1998, 1999, and 2000 tax years. Thereafter, taxpayer submitted a protest to the Department of Revenue (Department) in which the he "refuse[d] these proposed assessments, for cause, based upon errors in fact and law."

The Department acknowledged receipt of the protest and assigned the file to a hearing officer. Thereafter, taxpayer was advised of his right to explain the basis for the protest during an administrative hearing. Taxpayer declined the opportunity either to schedule a

hearing at his convenience or, alternatively, to attend a hearing which had been scheduled on his behalf. In declining to participate in the administrative hearing process, the taxpayer stated that "The undersigned is informed and believes that the DOR is operating under a SECRET JURISDICTION and, as such, is operating unlawfully." (*Emphasis in original*).

Faced with taxpayer's decision to submit a protest but refusal to participate in the available administrative hearing process, this Letter of Findings was prepared based upon taxpayer's original protest letter and on correspondence received after the protest was first submitted.

DISCUSSION

I. Taxpayer's Administrative Remedies.

Taxpayer challenges the Department's administrative procedures made available to him. Taxpayer maintains that the procedures deny him his due process rights and that he wishes "only to be brought before a judge of competent jurisdiction empowered under federal/state constitutions." Taxpayer maintains that the Department is "operating unlawfully."

IC 6-8.1-5-1(a) provides the Department with certain authority when it concludes that a taxpayer has failed to pay the taxes for which he is otherwise responsible. "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department." After the Department has made such a proposed assessment, it is then obligated to "send the person a notice of the proposed assessment through the United States mail." Id.

The Department apparently concluded, on the basis of W-2 forms issued to the taxpayer, that taxpayer failed to pay the taxes due on income received during 1998, 1999, and 2000. Taxpayer has not challenged the accuracy of the information contained within the W-2 forms. Taxpayer has not challenged the method by which the Department calculated the amount of taxes due.

Having received a notice of "proposed assessment," the taxpayer is entitled to challenge the Department's conclusions. Furthermore, the Department is required to notify the taxpayer of his *right* to challenge the "proposed assessment." IC 6-8.1-5-1(c) provides that, "The notice [of proposed assessment] shall state that the person has sixty (60) days from the date the notice is mailed to pay the assessment or to file a written protest."

The taxpayer does not dispute the fact that he received the notices of proposed assessment. Taxpayer does not maintain the Department failed to advise him of his right to challenge the assessment. To the contrary, taxpayer – in a letter dated May 19, 2002, and received by the Department on June 7, 2002 – acknowledged receiving the notices of

proposed assessment and submitted a protest of those assessments. Thereafter, on June 14, 2002, the Department formally acknowledged receipt of the taxpayer's protest.

Having received a taxpayer's protest, the Department is then required to provide the taxpayer an opportunity to fully explain the basis for that protest during an administrative hearing. IC 6-8.1-5-1(c) provides as follows: "If the person files a protest and requires a hearing on the protest, the department *shall*: (1) set the hearing at the department's earliest convenient time; and (2) notify the person by United States mail of the time, date, and location of the hearing." (*Emphasis added*).

On June 14, 2002, the Department notified taxpayer of his opportunity to appear at a hearing, was advised of his right to have a representative appear on his behalf, and was advised of the informal procedures employed during the administrative hearing. In addition, taxpayer was invited to suggest a convenient date on which the hearing could be scheduled. The taxpayer declined to respond to the June 14 correspondence, and the Department sent additional correspondence on July 8, 2002, again reminding him of his opportunity to explain the basis for his protest at an administrative hearing.

Taxpayer responded by means of correspondence dated July 15, 2002, and received by the Department on July 19, 2002. In that letter, taxpayer challenged the Department's authority to enforce the state's tax laws on "citizens that they [did] not apply to." In addition, the taxpayer suggested the Department was "acting without authority of law and 'under color of law' and created the legal presumption or conclusion that you and/or Indiana DOR are engaged in an extortion scheme against [taxpayer].

Following receipt of taxpayer's July 15 correspondence, the Department sent a letter dated July 19, 2002. The Department again advised the taxpayer of his right to an administrative hearing, explained the hearing procedures, and advised the taxpayer that the Department had scheduled a hearing for August 9, 2002, at 2:00 PM. In addition, the taxpayer was advised that "[i]f this time is not convenient for you . . . [the Department] would reschedule the hearing at a date and time of your choice."

Taxpayer responded on August 1, 2002, stating that he "[did] not wish to succumb to an administrative hearing before an administrative officer, posing as a judge, possibly assume a judicial role and force me to act accordingly."

There is nothing in the record to indicate the Department acted inappropriately in issuing taxpayer the notices of "Proposed Assessment" as authorized under IC 6-8.1-5-1(a). There is nothing in the record which disputes the accuracy of the amount of taxes set out in those notices.

In addition, there is nothing in the record which indicates that the Department failed to advise taxpayer of his right to an administrative hearing or that the Department acted in any way to deny taxpayer of his *right* to fully, fairly, and completely explain the basis for his protest.

Taxpayer's procedural due process claim is totally without merit. The essential guarantee of the Due Process Clause (U.S. Const. amends. V, XIV) is that of fairness. Any procedure must be fundamentally fair to the individual in the resolution of the factual and legal basis for government actions which will potentially deprive the citizen of life, liberty, or property. *See* Goldberg v. Kelly, 397 U.S. 254 (1970); Sniadach v. Family Finance Corp., 395 U.S. 337 (1969). Taxpayer has provided no basis upon which to substantiate his argument that the administrative procedures authorized under IC 6-8.1-5-1 are inherently unfair. Taxpayer has provided no support for his argument that the Department has, in any way denied the taxpayer a fair opportunity to explain the basis for his protest of the proposed assessment of additional individual income taxes.

Having declined to participate in the administrative review process, taxpayer's remaining option is to present his arguments to the Indiana Tax Court pursuant to IC 6-8.1-5-1(g). However, taxpayer is cautioned that "the tax court does not have jurisdiction to hear an appeal that is filed more than one hundred eighty (180) days after the date on which the letter of findings is issued by the department." Id.

FINDING

Taxpayer's protest is denied.

II. Applicability of the State's Individual Income Tax.

Having declined to actively participate in the administrative review process available to him, the Department is left with the task of discerning the basis for taxpayer's protest based upon the information contained within taxpayer's correspondence.

Taxpayer's first argument is that he is not a "statutory taxpayer" as defined under IC 6-2.1-1-16 and 45 IAC 1.1-1-22(b).

IC 6-2.1-1-16 reads, in its entirety as follows:

> "Taxpayer" means any: (1) assignee; (2) receiver; (3) commissioner; (4) fiduciary; (5) trustee; (6) institution; (7) national bank; (8) bank; (9) consignee; (10) firm; (11) partnership; (12) joint venture; (13) pool; (14) syndicate; (15) bureau; (16) association; (17) cooperative association; (18) society; (19) club; (20) fraternity; (21) sorority; (22) lodge; (23) corporation; (24) municipal corporation; (25) political subdivision of the state of Indiana or the state of Indiana, to the extent engaged in private or proprietary activities or business; (26) trust; (27) limited liability company (other than a limited liability company that has a single member and is disregarded as an entity for federal income tax purposes); or (28) other group or combination acting as a unit.

45 IAC 1.1-1-22 reads, in its entirety as follows:

"Taxpayer" includes the following:

(1) A regular C corporation.
(2) A regular C corporation that is a partner of a partnership.
(3) A not-for-profit organization on nonexempt income.
(4) A business trust as defined in IC 23-5-1-2.
(5) Indiana or a political subdivision of Indiana to the extent engaged in private or proprietary activities.
(6) A political organization as defined in Section 527 of the Internal Revenue Code.
(7) A publicly traded partnership that is treated as a corporation under Section 7704 of the Internal Revenue Code.
(8) A receiver, trustee, or conservator of a taxpayer subject to IC 6-2.1.
(9) An individual or entity required to withhold gross income taxes pursuant to IC 6-2.1-6.
(10) A fund, account, or trust treated as a corporation under Section 468B of the Internal Revenue Code or its accompanying regulations.
(11) A limited liability company, except when it is composed of a single member and is disregarded as an entity for federal income tax purposes.
(b) Except as provided in subsection (a), the term does not include the following:

(1) An individual.
(2) A partnership.
(3) A trust.
(4) An estate.
(5) An S corporation exempt under IC 6-2.1-3-24.
(6) A small business corporation as defined in IC 6-2.1-3-24.5.
(7) An organization wholly exempt from the gross income tax under IC 6-2.1-3.

At first reading, it would appear that taxpayer's argument has merit. Taxpayer is indeed not a "national bank," "cooperative," "sorority" or any of the enumerated classes of statutory taxpayers defined under IC 6-2.1-1-16. The accompanying regulation seems to confirm taxpayer's assertion; indeed, the language of 45 IAC 1.1-1-22(b)(1) specifically states that "An individual" is not subject to the state's gross income tax. However, taxpayer's argument is nonsensical because taxpayer has not been assessed gross income taxes. Indeed no individual is *ever* subject to gross income tax. The state's gross income tax is imposed exclusively on certain business entities which are either residents or domiciliarys of Indiana or on non-resident business entities which nonetheless derive income from doing business within the state. IC 6-2.1-2-2. In taxpayer's case, the notices of "Proposed Assessment" advised taxpayer that he was being assessed individual adjusted gross income taxes. *See* IC 6-3-1-3.5 et seq.

Taxpayer's next argument is that an individual cannot be assessed income tax against income received for the provision of services. To that end, taxpayer cites to Edwards v.

Keith, 231 F. 110 (2nd Cir. 1916) in which the court stated that, "[O]ne does not 'derive' income' by rendering services and charging for them." Id. at 113. However, taxpayer neglects to describe the substance of that case in which the plaintiff taxpayer, in his role as an insurance agent, argued that he could not be assessed income taxes on insurance commissions which were due him but which the agent had not yet actually received. The Second Circuit Court of Appeals agreed with the plaintiff taxpayer stating that taxes could not be levied against commission income earned, but not yet received because "there [was] no certainty that the sum conditionally promised for an ensuing year will be paid or will accrue or come due." Id. at 112. The court also pointed out that "the obligation does not arise until [the insured] actually pays his renewal premium in tax." Id. In taxpayer's case, there is no contention that the Department has assessed individual income tax against income which the taxpayer has not yet received.

Taxpayer has postulated numerous alternative theories purportedly forming a basis for his assertion that he is not subject to the state's individual adjusted gross income tax. However, the Department will not expend its resources in addressing the remaining arguments which are as equally ill-conceived as those previously here considered. Suffice it to say that the Indiana Constitution specifically provides that, "The general assembly may levy and collect a tax upon income, from whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law." Ind. Const. art X, § 8. Pursuant to that constitutional provision, the Indiana General Assembly exercised its prerogative by imposing an adjusted gross income tax on individuals and corporations. IC 6-3-1-3.5 et seq. In doing so, the General Assembly defined an individual subject to the adjusted gross income tax as a "natural born person, whether married or unmarried, adult or minor." IC 6-3-1-9.

Taxpayer is of the opinion that, with the just the right semi-mystical combination of semantic technicalities and invocations to irrelevant court cases, he can render himself immune from state income tax liability; such a supposition defies ordinary common sense. There is not one single Federal or state court case which supports such a fanciful notion. Wishful thinking aside, given that taxpayer received gross income (I.R.C. § 61) in 1998 through 2000, is an "individual" under IC 6-3-1-9, was a resident of Indiana for during those years (IC 6-3-1-12), and is a "taxpayer" as defined within (IC 6-3-1-15), the statutes imposing the Indiana individual income tax apply with full force to taxpayer's individual income.

FINDING

Taxpayer's protest is denied.

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